

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

TERRY MEYERS)	
Claimant)	
VS.)	
)	Docket No. 222,336
THOMAS WINTER CONSTRUCTION)	
Respondent)	
AND)	
)	
WAUSAU UNDERWRITERS INSURANCE CO.)	
Insurance Carrier)	

ORDER

Current counsel for claimant appeals from the August 25, 1999 Order by Administrative Law Judge Pamela J. Fuller. The Appeals Board heard oral argument January 5, 2000.

ISSUES

The appealed Order divides a total contingency fee of \$5,100 evenly between claimant's counsel and previous counsel. Claimant's current counsel contends the Administrative Law Judge erred, the attorney fees should be based on quantum meruit and should be for a lesser amount.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the Order should be modified. Claimant's previous counsel, Mr. Gerald O. Schultz, is entitled to \$1,200 in attorney fees and current counsel, the law firm of C. Albert Herdoiza, is entitled to the remaining \$3,900 of the total \$5,100 in attorney fees awarded.

FINDINGS OF FACT

1. On April 1, 1997, claimant entered a contingency fee contract with Mr. Schultz. The contract called for a fee of 25 percent of amounts recovered.

2. While Mr. Schultz was representing claimant, respondent offered to settle the claim for a lump-sum payment of \$13,256. Claimant rejected the offer and sought new counsel. On October 28, 1997, claimant retained the law firm of C. Albert Herdoiza, again based on a contingency fee agreement for 25 percent of the amounts recovered. Mr. Schultz spent 10 to 12 hours representing claimant's interests in this claim.

3. Mr. Herdoiza was able to obtain additional medical treatment for claimant and ultimately settled the claim on July 28, 1999, for a lump sum of \$24,000, medical expenses previously paid, and unauthorized medical expenses.

4. At the settlement hearing, the special administrative law judge approved an attorney fee based on 25 percent of the first \$10,000 recovered, 20 percent of the next \$10,000 recovered, and 15 percent of any recovery over \$20,000. The total amount of the fee calculated as approved, amounts to \$5,100.

CONCLUSIONS OF LAW

1. An attorney discharged before the occurrence of the contingency is not entitled to recover on the contingency fee contract, but may recover, in quantum meruit, the reasonable value of services rendered. *Madison v. Goodyear Tire & Rubber Co.*, 8 Kan. App. 2d 575, 663 P.2d 663 (1983).

2. In this case, the Board finds the contingency provided for in Mr. Schultz's contingency fee contract, namely recovery of benefits, had not occurred at the time claimant discharged Mr. Schultz and, as a result, Mr. Schultz may recover the reasonable value in quantum meruit but not on the basis of the contingency fee contract.

3. The Board finds the reasonable value of services rendered by Mr. Schultz is \$100 per hour for 12 hours for a total of \$1,200.

4. Claimant's current counsel is entitled to the remaining \$3,900 out of the total attorney fee award of \$5,100.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order entered by Administrative Law Judge Pamela J. Fuller on August 25, 1999, should be, and the same is hereby modified. Claimant's previous counsel, Mr. Schultz, is entitled to and is awarded attorney fees in the amount of \$1,200. The law firm of C. Albert Herdoiza is entitled to and is awarded attorney fees in the amount of \$3,900.

IT IS SO ORDERED.

Dated this ____ day of February 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: C. Albert Herdoiza, Kansas City, KS
Thomas R. Fields, Kansas City, KS
Gerald O. Schultz, Garden City, KS
Craig A. Posson, Garden City, KS
D. Shane Bangerter, Dodge City, KS
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Director